

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Pasadena Avenue Monterey Road Committee for variance of General Order 143B and authority to explore and enter into negotiations for consideration and implementation pursuant to Public Utilities Code (PUC) §§ 1202, 7604 as a pilot project as permitted by SB 1491.

Application 03-01-013
(Filed January 16, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON PRELIMINARY LEGAL ISSUES, REQUIRING
PREHEARING CONFERENCE STATEMENTS, AND
ALLOWING LATE FILING OF REPLY BRIEF**

1. Background

This application is one of a series of applications related to the construction of the Los Angeles to Pasadena Blue Line light rail system.¹ The applicant, Pasadena Avenue Monterey Road Committee (PAMRC), requests that exemptions from some of the requirements of General Order (GO) 143-B be applied to the Gold Line in South Pasadena. The Los Angeles County Metropolitan Transportation Authority (MTA), the operator of the Gold Line, filed a protest on February 20, 2003. The Los Angeles to Pasadena Metro Blue Line Construction Authority (Construction Authority) filed a response to the application on February 20, 2003.

¹ Since the initial applications were filed, the line has been renamed the Gold Line. That name will be used here.

PAMRC's requested changes to the planned Gold Line fall into three groups: a "no-horn" zone in parts of South Pasadena, which PAMRC proposes be undertaken as a pilot program pursuant to Public Utilities Code § 1202;² a speed limit of 20 miles per hour for Gold Line trains approaching and leaving crossings in South Pasadena; and specific types of crossing protection devices at the Gold Line at-grade crossings in South Pasadena.

At the prehearing conference (PHC) held on April 2, 2003, the parties agreed to hold informal discussions that might clarify the scope of the relief requested by PAMRC. They also agreed to file briefs addressing some preliminary legal issues that were identified at the PHC.³ The Scoping Memo and Ruling of Assigned Commissioner (April 28, 2003) noted that further development of the issues to be determined in this proceeding would follow resolution of some of the preliminary issues. Subsequent to the PHC, the City of South Pasadena (City) entered this proceeding, aligning itself with PAMRC.⁴

² Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code, and citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

³ These issues included, but were not limited to: the scope of requests for a deviation under GO 143-B; the applicability of the pilot project authority in § 1202; the viability of the request for a no-horn zone if the pilot project authority does not apply; the impact on this proceeding of prior Commission decisions on the Construction Authority's applications; the standards for deciding whether any issue decided in a prior proceeding on the Construction Authority's applications should be revisited in this proceeding; and procedural issues related to this application (*e.g.*, compliance with Rule 17.1 on the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq*).

⁴ PAMRC and the City will be referred to collectively as PAMRC.

MTA and PAMRC submitted opening and reply briefs on legal issues. PAMRC's opening brief was submitted late, but the Administrative Law Judge determined that it could be filed, despite the absence of a request for permission for late filing. PAMRC's reply brief was submitted late, with a motion for permission to file late. The motion should be granted.

It appears that no clarification of PAMRC's desired relief emerged from the parties' informal discussions. The briefs filed by MTA and PAMRC are, therefore, the most current statements of the parties' positions.

2. Discussion

2.1. No-Horn Zone

2.1.1. Section 1202 Pilot Project

PAMRC proposes that the prohibition on the use of horns by the Gold Line in parts of South Pasadena be instituted under the Commission's authority to approve pilot projects under § 1202 (d). PAMRC does not directly address the status of its no-horn zone request if the Commission does not have authority to approve it as a pilot project under § 1202(d), but it appears that PAMRC wishes to pursue the request whether or not it qualifies as a pilot project.

The Commission's authority to grant a request for a pilot project has expired by the express terms of the statute. The Legislature provided that "no new pilot project may be authorized after January 1, 2003." (§ 1202 (d) (2).) That deadline has passed. PAMRC argues that its application escapes the deadline because it was filed at the Commission's Los Angeles office before January 1, 2003. This is unconvincing. PAMRC wants the statute to be read as: "no new pilot project may be authorized *when an application for the pilot project has been filed prior to January 1, 2003,*" but that is not what the statute says. It would

have been simple for the Legislature to write such a provision, but it did not do so.

2.1.2. Legal Sufficiency

PAMRC's request for a variance to establish a no-horn zone, though unusual, is within the parameters of GO 143-B. Section 1.07, which authorizes requests for exemptions or modifications from the rules, does not limit the parties that may make an exemption request. PAMRC's no-horn zone request may therefore go forward.

In D.02-10-023, the Commission noted that the proponent of such a request would be required to establish both that the noise level with the use of horns is so excessive as to justify an exemption to GO 143-B and that the crossings at issue would be safe without horns. PAMRC must make that double showing in this proceeding. In its briefs, PAMRC suggests that one of the City's ordinances, addressing "rail and railroad nuisances," provides a basis or justification for its requested exemptions. This suggestion misses the mark. The City's views on rail and railroad nuisances are not binding on the Commission, which has statewide authority over rail safety, including light rail. PAMRC must meet the Commission's standards, not the City's, in this proceeding for an exemption from one of the Commission's general orders.

2.2 Twenty Mile-Per-Hour Speed Limit

PAMRC's request for a variance from the maximum speeds allowed under GO 143-B has no independent basis, but is tied to its no-horn request. The reduced speed approaching and going through at-grade crossings is part of the method of operation of the Gold Line that PAMRC proposes to support the no-horn zone. It may therefore be considered in this proceeding as part of the no-horn proposal.

2.3. Crossing Protection

PAMRC's third set of requests, related to crossing protection in South Pasadena, is not appropriately part of this application. Crossing protection is governed by GO 7-5C, not GO 143-B. There is no apparent connection between PAMRC's core request for the no-horn zone and its request that certain types of crossing protection be provided or maintained. These claims should therefore be dismissed.

3. PHC Statements

In order to make the July 29 PHC more productive and assure that any evidentiary hearings (EH) will address relevant issues, all parties must serve and file PHC statements on or before July 21, 2003. Though the parties are free to meet and confer about their PHC statements, they are not required to do so. Each party shall file its own statement, providing the following information:

1. Identifying each issue on which the party intends to offer evidence at the EH.
2. Providing the name of each witness intended to testify on each issue identified, along with the witness's professional position or title, if any, and a brief summary of the qualifications of the witness. If specific witnesses have not yet been identified, the number of witnesses to testify and a brief but clear description of the profession or qualifications of the type of witness to testify for each issue must be provided.
3. Identifying each issue relevant to a decision in this proceeding that the party believes will not require testimony or documentary evidence at the EH, and explaining why no testimony or documents will be required.

Any party failing to identify any issues and witnesses in its PHC statement, as described above, may be precluded from presenting witnesses on those issues at the EH.

IT IS RULED that:

1. Pasadena Avenue Monterey Road Committee's (PAMRC) motion to file its late reply brief is granted.
2. PAMRC's request that its application be considered as an application for a pilot project under Public Utilities Code Section 1202 (d) is denied.
3. PAMRC's request that specific types of crossing protection be maintained for the Gold Line at-grade crossings in South Pasadena is dismissed.
4. The parties are required to file and serve prehearing conference statements as set forth herein.

Dated June 30, 2003, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Preliminary Legal Issues, Requiring Prehearing Conference Statements, and Allowing Late Filing of Reply Brief on all parties of record in this proceeding or their attorneys of record.

Dated June 30, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.